

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant Lianga Pacific, Inc., (hereinafter "LP") owns a
6 woodwaste boiler located at 2120 Port of Tacoma Road in Tacoma. The
7 boiler was installed at the site by appellant Western Combustion,
8 Inc., (hereinafter "WC") under notice of construction permit No. 1941
9 issued by respondent Puget Sound Air Pollution Control Agency
10 (hereinafter "PSAPCA") on October 10, 1979.

11 II

12 On March 28, 1980, WC sent a notice to PSAPCA that work had been
13 completed on March 24 and operation began on March 26. Adjustments
14 and trial runs of the boiler was expected over the next two weeks.

15 III

16 On March 27, 1980, at about 4:00 p.m. respondent's inspector saw
17 black smoke emitted from LP's woodwaste boiler stack. After
18 positioning himself, he observed the smoke and recorded opacity
19 readings between 25 percent to 80 percent for 7-3/4 of 8 minutes from
20 the stack. He contacted his office and learned that no notification
21 was given under Section 9.16 of Regulation I for the observed smoke.

22 The inspector contacted the president of LP and learned that the
23 smoke was the result of the startup of a new boiler. WC was operating
24 the boiler at that time. Appellants were advised of the availability
25 of Section 9.16 for startups and breakdowns.

26 For the foregoing event, appellants LP and WC were sent a notice
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1 of violation of Section 9.03(b) from which followed a \$250 civil
2 penalty and this appeal.

3 IV

4 On April 10, 1980 at about 11:00 a.m. while on routine patrol,
5 respondent's inspector saw brown-white smoke emitted from LP's
6 woodwaste boiler stack. After positioning himself he took an
7 observation and recorded an opacity ranging from 50 to 100 percent for
8 11 consecutive minutes.

9 For the foregoing event, appellant LP was sent a notice of
10 violation of Section 9.03(b) from which followed a \$250 civil penalty
11 and this appeal.

12 V

13 The violation occurring on March 27, 1980 was caused by a
14 defective damper and hydraulic drive which allowed an accumulation of
15 unburned particles to cause smoke. The defective equipment was
16 replaced.

17 The violation occurring on April 10, 1980, was caused by the
18 inability of the metering screw feed mechanism to provide the proper
19 amount of wood fuel thereby upsetting the proper air-fuel ratio and
20 causing the boiler to smoke. New parts were installed on the boiler
21 on April 17, 1980.

22 VI

23 Smoke can be generated from a wood fired boiler during its trial
24 adjustment period and during normal startups. Appellants are
25 operating a smaller boiler (100 h.p.) than is commonly found using
26 wood as fuel. Appellants contend that respondent's regulations should
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1 provide for a grace period during startups of wood fueled boilers.

2 VII

3 Pursuant to RCW 43.21B.260, respondent has filed with this Board,
4 a certified copy of its Regulation 1 and 2, which are noticed.

5 Section 9.03(b) makes it unlawful for any person to cause or allow
6 the emission of any air contaminant, including smoke, for more than
7 three minutes in any one hour, which is equal to or greater than 20
8 percent opacity.

9 Section 9.16 provides for excusing violations resulting from
10 startups, periodic shutdowns, or unavoidable and unforeseeable failure
11 or breakdown, or unavoidable and unforeseeable upset or breakdown of
12 process equipment or control apparatus if certain conditions are met.
13 One condition is the notification of PSAPCA of the pertinent facts.

14 Section 3.29 provides for a civil penalty of up to \$250 per day
15 for each violation of Regulation I.

16 VIII

17 Any Conclusion of Law which should be deemed a Finding of Fact is
18 hereby adopted as such.

19 From these Findings the Board comes to these

20 CONCLUSIONS OF LAW

21 Appellant WC and LP violated Section 9.03(b) as alleged on March
22 27, 1980. The assessment of a civil penalty (No. 4661) was proper and
23 is reasonable in amount.

24 II

25 Appellant LP violated Section 9.03(b) as alleged on April 10,

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 1980. The assessment of a civil penalty (No. 4679) was proper and is
2 reasonable in amount.

3 III

4 Appellants did not avail themselves of Section 9.16 which may have
5 excused them from the instant violations. We do, however, consider
6 the circumstances which resulted in the violations as matters
7 relevant in mitigation of the penalties. Two hundred dollars of the
8 \$250 civil penalty assessed for the March 27 occurrence should be
9 suspended. Appellants thereafter had actual notice of the
10 availability of Section 9.16. Appellant LP did not use the provision
11 on April 10, and the penalty, for the most part, should be sustained.
12 Accordingly, \$50 of the second \$250 should be suspended.

IV

14 Any Finding of Fact which should be deemed a Conclusion of Law is
15 hereby adopted as such.

16 From these Conclusion the Board enters this
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ORDER

1. The \$250 civil penalty (No. 4661) is affirmed; provided, however, that \$200 of the penalty is suspended.

2. The \$250 civil penalty (No. 4679) is affirmed; provided, however, that \$50 of the penalty is suspended on condition that appellant Lianga Pacific, Inc., not violate respondent's regulations for a period of six months from the date of this order.

DATED this 16th day of September, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member